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SUBSIDIES AND COUNTERVAILING MEASURES

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Subsidies & CVM

Option 1



**National
investigation**



**Determination may
be appealed to WTO**



**Result: Imposition of
CVD measures at the
border**



Subsidies & CVM

Option 2

WTO Dispute

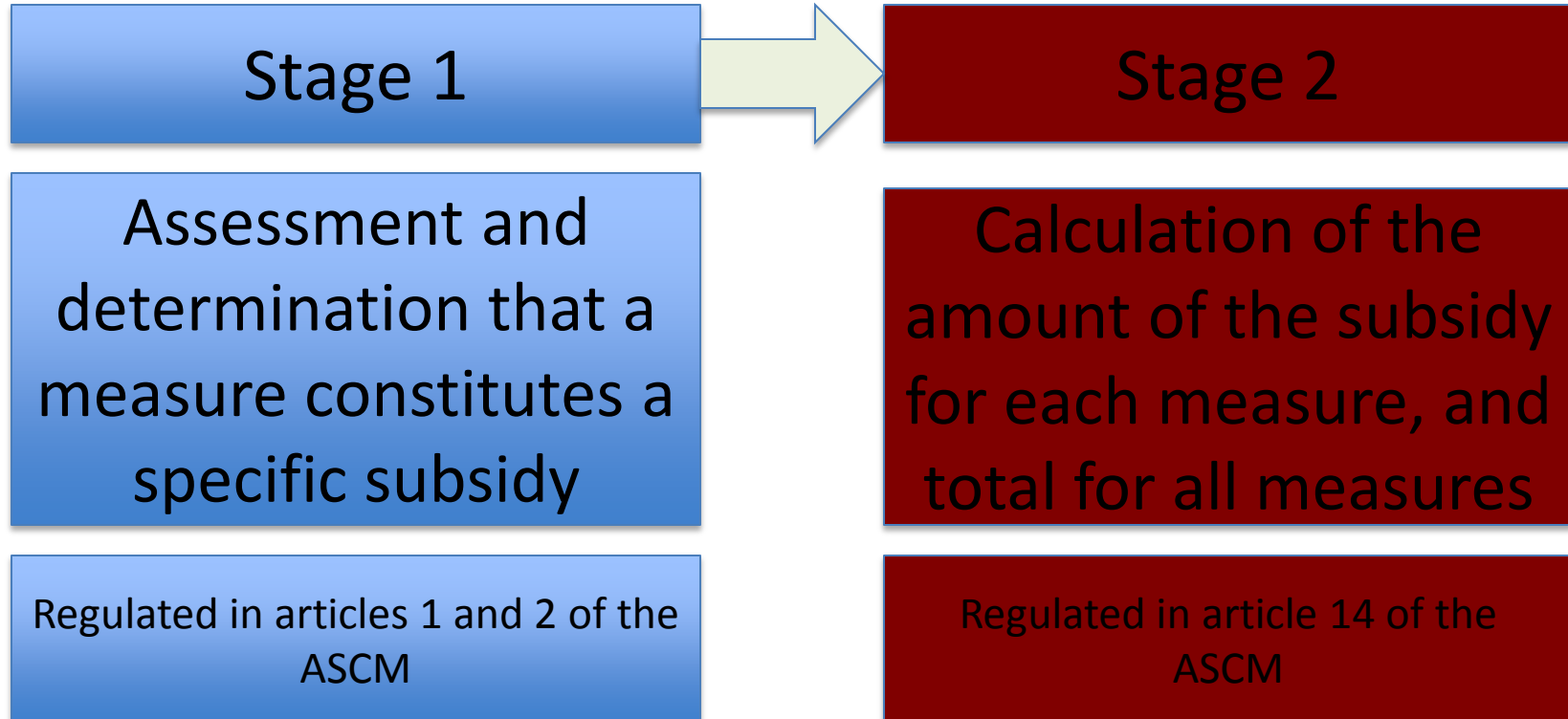
**Result: WTO requests
the subsidy to be
withdrawn or its
effects eliminated**

**Assessment made by
a panel & AB of the
WTO**



CV Measures

Two Stages:



(*) ASCM – Agreement on Subsidies and Countervailing Measures



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Stage 1: Subsidy and specificity determinations



What is a Subsidy?

Financial assistance provided by the government that confers a benefit to its beneficiary

Important: Only actionable under the current framework if a subsidy is specific



Subsidy determination

Step 1

- Does the programme constitute a financial contribution of Article 1.1(a)(1) or (2) of the WTO ASCM?
- If the answer is “yes”, continue to the next step

Step 2

- Is the financial contribution granted “by a government or any public institution within the territory of a Member”?
- If the answer is “yes”, continue to the next step

Step 3

- Does the financial contribution confer a benefit to its recipient?
- If the answer is “yes”, **the programme investigated constitutes a subsidy for the purposes of the WTO ASCM**



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Elements – Financial contribution



Direct transfer of funds



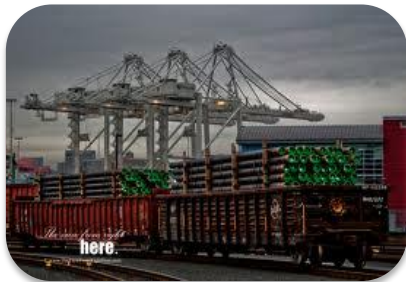
Potential direct transfer of funds



Government revenue that is due is foregone or not collected



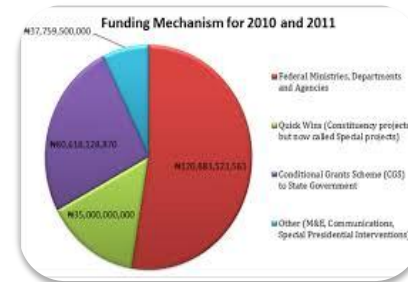
Price or income mechanism



Government provides goods or services, other than general infrastructure



Government purchases services



Government makes payments to a funding mechanism



Elements – Govt.

- **By a government or any public institution**
 - Cross-subsidisation among private companies is not actionable
 - Govt includes all levels (central, federal, regional, municipal, etc.)
 - Public body: not defined but includes e.g. companies in which the state has ownership
 - Govt “entrustment” or “direction”
 - “Within the territory of a Member”



Elements - Benefit

- **Benefit**

- A measure or programme is **not** actionable unless it confers a benefit to its recipient
- Economic assessment is normally required:
 - Is the financial contribution provided on terms that are more advantageous than those that would have been available to the recipient on the market?
- Benchmarks: e.g. conditions and terms for a loan extended by a commercial bank; taxes that would be paid by a company not using a programme; etc.



Specificity

Specificity *de jure*

- Enterprise or group thereof
- Industry or group thereof
- Regional
- Prohibited subsidies (export subsidies and local content subsidies)

Specificity *de facto*

- Subsidies which are not *de jure* specific but for which “there are reasons to believe that the subsidy may be *in fact* specific”
- Factors: use of the programme by a limited number of certain enterprises, predominant use by some enterprises, the granting of disproportionately large amounts of subsidy to certain enterprises etc.

Non-Specific Subsidies



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Some Examples





■ Is there a subsidy?

○ Country A provides a cash benefit of 10 percent of the f.o.b. value of any export

- There is a financial contribution by a government
- It confers a benefit
- It is specific (provided to exporters only)

○ Country B provides an income tax exemption for export earnings

- There is a financial contribution by a government
- There is a benefit (if there was taxable income)
- It is specific because it only provided to exporters

These examples are in fact export subsidies, which are **prohibited**



■ Is there a subsidy?

○Country A provides an income tax exemption limited to the steel industry

- There is a financial contribution by a government
- There is a benefit (if the company has taxable income)
- It is specific as it is only provided to a specific industry

○Country B provides inputs to the steel industry at a price lower than the market price

- There is a financial contribution by a government
- There is a benefit if the market price for steel is higher
- It is specific as it is only provided to a specific industry

These are two examples of domestic subsidies



■ Is there a subsidy?

- Country A provides a line of credit at the market rate to the steel industry
 - There is a financial contribution by a government
 - There is no benefit to the steel industry (because the credit is at the market rate)
- Country B provides police and fire protection NOT provided on a discriminatory basis
 - There is a financial contribution by a government
 - There is a benefit
 - There is no specificity (all companies may benefit)



- Is there a subsidy?

- Country C provides a tax holiday to new industries in the country
 - There is a financial contribution by a government
 - There is a benefit (if the company has taxable income)
 - In law, the subsidy may not be specific. In practice, will depend upon the number of industries that receive such benefits and how the government uses its discretion to provide such benefits
- Country D reduces the corporate tax rate from 40 to 35 percent

- What do you think?



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Stage 2: Calculation of the subsidy amount



The rules in the ASCM

- ASCM grants a certain degree of freedom to Members to determine the methodologies to be used but...
- ... the methodologies adopted must be published and explained
- ... methodologies must be consistent with the guidelines provided in Article 14



Guidelines Art. 14 ASCM

1. Provision of equity capital (usual investment practice)
2. Loans (comparable commercial loan)
3. Loan guarantees
4. Provision of goods or services (adequacy of remuneration/prevaling market conditions)
5. Purchase of goods, not services (same as 4 above)



Example Calculation - Loan

1. A company receives a loan from a public bank for a value of USD100,000 to buy raw materials.

Annual interest rate: 2%. Term: 1 year

2. The annual interest rate for a comparable commercial loan would be **6%**

3. Calculation (ad valorem):

$$\frac{\text{USD6,000} - \text{USD2,000}}{\text{USD100,000}} = 4\%$$



Example calculation - Grant

1. A company receives a grant (USD1 million) from the government to buy a machine
2. The company sells USD20 million of goods produced with the machine bought
3. Calculation (ad valorem):

$$\frac{\text{USD 1 million}}{\text{USD20 million}} = 5\%$$



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Multilateral track - WTO



Types of subsidies

Prohibited subsidies

- Two types (Article 3):
 - (a) Contingent on **export** performance (See also Annex I of the ASCM)
 - (b) Contingent on use of **domestic over imported goods**
- If a panel finds that a certain measure is a prohibited subsidy, the Member must withdraw the subsidy without delay (Article 4.7)



Types of subsidies

Actionable Subsidies (Article 5)

- “No Member should cause, through the use of any subsidy ..., adverse effects to the interests of other Members, i.e.:
 - (a) injury to the domestic industry of another Member
 - (b) nullification or impairment of benefits accruing directly or indirectly to other Members
 - (c) serious prejudice to the interests of another Member



Types of subsidies

Serious Prejudice

- **Volume effects**
displacement or impedance of imports in *subsidizer's market or 3rd country market*
- **Price effects** undercutting, suppression or depression, or lost sales *in any market*
- **Increased *world market share* - *primary products only*** -
measured in comparison with share during previous 3 years,
consistent trend while subsidies granted



Types of subsidies

Nullification or Impairment of Benefits

- Nullification or impairment:
a subsidy is given to offset the value of a concession, thereby eliminating or reducing the market access the exporter expected (Oilseeds case)



Types of subsidies

Injury

- Injury in this context has identical meaning to that in countervail context
- A WTO dispute settlement panel, not the investigating authorities of importing country, determines injury and causation



Types of subsidies

Comparison of Remedies (I)

	Prohibited Subsidies	Actionable Subsidies
1	Request for consultations, including statement of available evidence regarding existence and nature of subsidy;	Request for consultations, including statement of available evidence regarding existence and nature of subsidy and injury caused to domestic industry (nullification or impairment, or serious prejudice);
2	Consultations as quickly as possible;	Consultations as quickly as possible;
3	If no solution within 30 days → referral to Dispute Settlement Body for immediate establishment of panel;	If no solution within 60 days → referral to Dispute Settlement Body for establishment of panel; composition of panel and terms of reference within 15 days;
4	Panel may request assistance from Permanent Group of Experts for binding advice on whether it is a prohibited subsidy.	
5	Circulation of panel report within 90 days of date of composition of panel and establishment of terms of reference;	Circulation of panel report within 120 days of date of composition of panel and establishment of terms of reference;



Types of subsidies

Comparison of Remedies (II)

	Prohibited Subsidies	Actionable Subsidies
6	If the subsidy is prohibited, panel recommends that the member withdraw it without delay and specifies the time period for withdrawal. Thus far, panels have generally given 90 days.	
7	Within 30 days of circulation, report to be adopted by DSB, unless appealed;	Within 30 days of circulation, report to be adopted by DSB, unless appealed;
8	Appellate Body must normally issue decision within 30 days from notice of intention to appeal; in no event more than 60 days.	AB must normally issue decision within 60 days from notice of intention to appeal; in no event more than 90 days.
9		After adoption of panel or AB report that finds adverse effects, subsidizing member must take appropriate steps to remove the adverse effects or withdraw the subsidy.



Types of subsidies

Comparison of Remedies (III)

	Prohibited Subsidies	Actionable Subsidies
10	If DSB recommendation is not followed within time period specified by panel (which commences from date of adoption of the panel/AB report), DSB grants authorization to complaining member to take appropriate proportionate countermeasures.	If member does not take steps within 6 months from date of DSB's adoption of panel or AB report, DSB authorizes complaining member to take appropriate countermeasures, commensurate to the degree and nature of adverse effects.
11	Applicable DSU time periods shall be half.	



Types of subsidies

Non-Actionable Subsidies (Arts. 8-9)

- Article 31: Provisions regarding non-actionable subsidies to apply for five years - *Expired 31 December 1999*
- ~~Assistance for research activities~~
- ~~Assistance to disadvantaged regions~~
- ~~Assistance to promote adaptation of existing facilities to new environmental requirements~~



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